

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (at Cincinnati)

LAURA AKER
5730 BRANDTMANOR DR.
CINCINNATI, OH 45248

and

GEORGE ARNOLD
10647 CHESHIRE RIDGE DRIVE
FLORENCE, KY 41042

and

CINDY BARTLETT
4652 CATALPA COURT
FORT WRIGHT, KY 41017

and

JOSEPH BAUMGARDNER
10252 LIMERICK CIRCLE
COVINGTON, KY 41015

and

MICHELLE BEAVAN
875 AUTUMN COURT
TRENTON, OH 45067

and

DENISE BESS
1873 TIMBERIDGE DRIVE
LOVELAND, OH 45140

and

LEONA BEYER
325 KENYON DRIVE
HAMILTON, OH 45015

and

CASE NO. _____

JUDGE _____

COMPLAINT WITH JURY
DEMAND ENDORSED HEREON

and

JESSICA COCHRAN
5518 JANDEL DRIVE
AURORA, IN 47001

and

**ELIZABETH COMPO
9069 BRAXTON DRIVE
UNION, KY 41091**

and

BRENDA CONLEY
2468 CHERRY STREET #1
CRESCENT SPRINGS, KY 41017

and

MICHAEL CRAIL
1887 HAPPY VALLEY DR.
FAIRFIELD OH, 45014

and

JOI CROWE
1203 ANTHONY LANE
MASON, OH 45040

and

**TAMMY DALE
439 MORROW ROAD, LOT 79
SOUTH LEBANON, OH 45065**

and

**PATRICK DUGAN
1239 SPOTTED FAWN RUN
MILFORD, OH 45150**

and

CHRIS EBBING)
4213 APPLGATE AVENUE, APT. 1)
CINCINNAT OHIO 45211)

and)

KEVIN ELFERS)
928 BRIARWOOD COURT)
MASON, OH 45040)

and)

ARLENE FAIT)
10174 BURLEIGH LANE)
UNION, KY 41091)

and)

LINDA FAVARON, AS EXECUTOR OF)
THE ESTATE OF NEIL FAVARON,)
DECEASED,)
136 SOUTH MASON-MONTGOMERY)
ROAD)
MASON, OH 45040)

and)

AMANDA FRANKS)
651 RUTLAND ROAD)
CYNTHIANA, KY 41031)

and)

MARK FUNK)
5251 SANBOURNE STREET)
COCOA, FL 32927)

and)

CHRISTINE GERALDS)
1890 MISTY HILL DR.)
CINCINNATI, OH 45240)

and)

CHRISTINA GOLDSTEIN)
1422 ASCHINGER BOULEVARD)
COLUMBUS, OH 43212)

and)

SAMANTHA HAMILTON-CURTIS)
613 MILLVILLE-OXFORD ROAD)
HAMILTON, OH 45013)

and)

MARTHA HUTTON)
110 WROE AVENUE, APT. 1)
DAYTON, OHIO 45406)

and)

JEFFREY HYDE)
105 CRYSTAL LAKE DRIVE)
COVINGTON, KY 41017)

and)

SHANNON KOEHLER)
135 MONTCLAIR STREET)
LUDLOW, KY 41016)

and)

TOM LANTRY)
102 PROMONTORY DRIVE, APT. D)
COVINGTON, KY 41015)

and)

CANDI MCKINNEY)
4258 ASPEN DRIVE APT. 2)
INDEPENDENCE, KY 41051)

and)

TERESA MCMILLEN)
10616 CINDERELLA DRIVE)
MONTGOMERY, OH 45242)

and)
)
BILLIE MOORE)
2525 LEMON NORTHCUTT ROAD)
DRY RIDGE, KY 41035)
)
and)
)
TIMOTHY OSBORN)
57 E. MAIN STREET, UNIT B)
CLARKSVILLE, OH 45113)
)
and)
)
JEFF POTTS)
8971 ELDORA DRIVE)
CINCINNATI, OH 45236)
)
and)
)
SHERRI PUCKETT-MORRISSETTE)
164 TAYLOR AVENUE)
MARYSVILLE, OHIO 43040)
)
and)
)
MIKE SAND)
3270 RECTOR ROAD)
MORNINGVIEW, KY 41063)
)
KEVIN SCHMIT)
5490 CANNAS DR.)
CINCINNATI, OH 45238)
)
and)
)
PATRICK SCHMIT)
2778 TOLBERT RD.)
HAMILTON, OH 45011)
)
and)
)
GLENN SHAFER)
3151 RIVER ROAD)
CINCINNATI, OH 45204)
)

and)
)
PATRICK STEPHENSON)
240 WAGEL ROAD)
BROOKSVILLE, KY 41004)
)
and)
)
BRIAN THIEN)
7750 OTTAWA LANE, #158)
WEST CHESTER OH 45069)
)
and)
)
BRITNEY HAVENS, AS)
ADMINISTRATOR OF THE ESTATE)
OF KIMBERLY UNDERWOOD,)
DECEASED,)
1340 PARKWAY AVENUE)
COVINGTON, KY 41016)
)
and)
)
LINDSAY WALSH)
16620 SE 70TH STREET)
BELLEVUE, WA 98006)
)
and)
)
TRACEY WALSH)
4246 WEST ARM DRIVE)
SPRING PARK, MN 55384)
)
and)
)
LONNIE WHEELER)
406 MONTE DRIVE)
MASON, OH 45040)
)
and)
)
KEITH YOUNG)
491 HARWOOD ROAD)
MT. ORAB, OH 45154)
)
PLAINTIFFS)

v.

ABX AIR, INC.

SERVE:

THE PRENTICE-HALL

CORPORATION SYSTEM, INC.

50 WEST BROAD STREET, SUITE 1330

COLUMBUS, OH 43215

and

AMERICAN FINANCIAL GROUP, INC.)

SERVE:

CT CORPORATION SYSTEM

4400 EASTON COMMONS WAY

SUITE 125

COLUMBUS, OH 43219

and

ANTHEM INSURANCE CO.

SERVE:

COMMUNITY INSURANCE COMPANY)

120 MONUMENT CIR

INDIANAPOLIS, IN 46204

and

ARMOR GROUP, INC.

SERVE:

JEFFREY G. STAGNARO

2623 ERIE AVENUE

CINCINNATI, OH 45208

and

AT&T

SERVE:

CT CORPORATION SYSTEM

4400 EASTON COMMONS WAY

SUITE 125

COLUMBUS, OH 43219

and

BLUECROSS BLUESHIELD ILLINOIS)
SERVE:)
HEALTH CARE SERVICE)
CORPORATION)
ATTN: CEO)
BLUECROSS BLUESHIELD TOWER)
303 RANDOLPH)
CHICAGO, IL 60601)

and)

BLUECROSS BLUESHEILD)
TENNESSEE)
SERVE:)
ANNE HANCE)
1 CAMERON HILL CIR)
CHATTANOOGA, TN 37402-9815 USA)

and)

BUTLER HEALTH PLAN)
SERVE:)
STEPHANIE HEARN)
EXECUTIVE DIRECTOR)
400 N. ERIE BOULEVARD)
HAMILTON, OH 45011)

and)

CITI BANK)
SERVE:)
CT CORPORATION SYSTEM)
4400 EASTON COMMONS WAY)
SUITE 125)
COLUMBUS, OH 43219)

and)

CITY OF LAWRENCEBURG, INDIANA)
SERVE: HON. KELLY MOLLAUN,)
MAYOR,)
230 WALNUT STREET)
LAWRENCEBURG, IN 47025)

and)

COMMUNITY INSURANCE CO.)
ANTHEM)
SERVE:)
COMMUNITY INSURANCE COMPANY)
120 MONUMENT CIR)
INDIANAPOLIS, IN 46204)
)
and)
)
CONTAINERPORT GROUP, INC.)
SERVE:)
CORPORATION SERVICE COMPANY)
50 WEST BROAD STREET, SUITE 1330)
COLUMBUS, OH 43215)
)
and)
)
DEFINITY HEALTH)
UNITED HEALTH (DEFINITY))
SERVE:)
GALINA WINGATE)
6100 CHANNINGWAY BLVD - #002)
COLUMBUS, OH 43232)
)
and)
)
DELTA AIR LINES, INC.)
SERVE:)
CORPORATION SERVICE COMPANY)
50 WEST BROAD STREET)
SUITE 1330)
COLUMBUS, OH 43215)
)
and)
)
DHL)
SERVE: CT CORPORATION SYSTEM)
4400 EASTON COMMONS WAY)
SUITE 125)
COLUMBUS, OH 43219)
)
and)
)

DUKE ENERGY OHIO, INC.)
SERVE:)
139 EAST FOURTH STREET)
CINCINNATI, OH 45202)
)
and)
)
DURO HILEX POLY, LLC)
SERVE:)
CORPORATION SERVICE COMPANY)
50 WEST BROAD STREET SUITE 1330)
COLUMBUS, OH 43215)
)
and)
)
EMPIRE HEALTHCHOICE)
ASSURANCE)
SERVE:)
ANTHEM INSURANCE COMPANIES,)
INC.)
120 MONUMENT CIRCLE)
INDIANAPOLIS, IN 46204)
)
and)
)
ENERFAB, INC.)
SERVE:)
CORPORATION SERVICE COMPANY)
50 WEST BROAD STREET, SUITE 1330)
COLUMBUS, OH 43215)
)
and)
)
FIFTH THIRD BANCORP)
SERVE: CORPORATION SERVICE)
COMPANY)
50 WEST BROAD STREET, SUITE 1330)
COLUMBUS, OH 43215)
)
and)
)
FISHER AUTO PARTS CO.)
SERVE:)
ROBERT SCHMIDT)
1163 ROSEDALE AVENUE)
BUCYRUS, OH 44820)
)

and)
)
GAF, INC.)
SERVE: CORPORATION SERVICE)
COMPANY)
50 WEST BROAD STREET)
SUITE 1330)
COLUMBUS, OH 43215)
)
and)
)
THE GENERAL ELECTRIC COMPANY)
SERVE:)
CT CORPORATION SYSTEM)
4400 EASTON COMMONS WAY)
SUITE 125)
COLUMBUS, OH 43219)
)
and)
)
THE GOOD SAMARITAN HOSPITAL)
OF CINCINNATI, OHIO)
SERVE:)
OSAC, INC.)
100 S. THIRD STREET)
COLUMBUS, OH 43215)
)
and)
)
GRACEWORKS LUTHERAN)
SERVICES)
SERVE:)
JUDY A. BUDI)
6430 INNER MISSION WAY)
CENTERVILLE, OH 45459)
)
and)
)
GREEN TOWNSHIP, OHIO)
SERVE: FRANK BIRKENHAUER)
ADMINISTRATOR)
6303 HARRISON AVENUE)
CINCINNATI, OH 45247)
)
and)
)

HARLAND CLARKE CORP.)
SERVE:)
CT CORPORATION SYSTEM)
4400 EASTON COMMONS WAY)
SUITE 125)
COLUMBUS, OH 43219)
)
and)
)
HEALTH CARE SERVICE)
CORPORATION)
SERVE:)
ATTN: CHIEF EXECUTIVE OFFICER)
300 E. RANDOLPH ST.)
CHICAGO, IL 60601)
)
and)
)
HEARTLAND HEALTH & WELLNESS)
FUND)
SERVE:)
PRESIDENT OR GENERAL MANAGER))
7250 POE AVENUE, SUITE 300)
DAYTON, OH 45414)
)
and)
)
HP INC.)
SERVE:)
CT CORPORATION SYSTEM)
4400 EASTON COMMONS WAY)
SUITE 125)
COLUMBUS, OH 43219)
)
and)
)
JEFF WYLER DEALER GROUP, INC.)
SERVE:)
CORPORATE STATUTORY SERVICES,)
INC.)
255 E. FIFTH STREET, SUITE 2400)
CINCINNATI, OH 45202)
)
and)
)

KCI HOLDING USA, INC.)
SERVE:)
Konecranes, Inc.)
4401 Gateway Blvd.)
Springfield, OH 45502)
)
and)
)
LINEBARGER GOGGAN BLAIR &)
SAMPSON, LLP)
SERVE:)
CORPORATION SERVICE COMPANY)
50 WEST BROAD STREET, SUITE 1330)
COLUMBUS, OH 43215)
)
and)
)
BOARD OF EDUCATION OF THE)
MASON CITY SCHOOLS)
SERVE:)
211 N. EAST STREET)
MASON, OH 45040)
)
and)
)
MEYER TOOL, INC.)
SERVE:)
ALAN BLACK)
3055 COLERAIN AVE)
CINCINNATI, OH 45225)
)
and)
)
MIDWAY MAINTENANCE)
SERVE: WILLIAM R MEYER)
101 FOX DRIVE)
PIQUA, OH 45356)
)
and)
)
NEASE CORPORATION)
SERVE:)
CT CORPORATION SYSTEM)
4400 EASTON COMMONS WAY)
SUITE 125)
COLUMBUS, OH 43219)

and

OHIO LABORERS' DISTRICT
COUNCIL / OHIO CONTRACTORS
ASSOCIATION FUND
SERVE:
PATRICK A DEVINE
SCHOTTENSTEIN ZOX & DUNN
250 WEST STREET
COLUMBUS, OH 43215

and

OHIO PUBLIC EMPLOYEES
RETIREMENT SYSTEM
SERVE:
OHIO ATTORNEY GENERAL
30 E. BROAD ST., 14TH FLOOR
COLUMBUS, OH 43215

and

THE PROCTER AND GAMBLE
HEALTH CARE PLAN
SERVE:
CT CORPORATION SYSTEM
4400 EASTON COMMONS WAY
SUITE 125
COLUMBUS, OH 43219

and

ROTECH HEALTHCARE, INC.
SERVE:
NATIONAL REGISTERED AGENTS,
INC.
4400 EASTON COMMONS WAY
SUITE 125
COLUMBUS, OH 43219

and

RUMPKE CONSOLIDATED)
COMPANIES INC.)
SERVE:)
JAMES E. THAXTON)
10795 HUGHES RD)
CINCINNATI, OH 45251)
)
and)
)
SARA LEE CO.)
SERVE:)
CT CORPORATION SYSTEM)
4400 EASTON COMMONS WAY)
SUITE 125)
COLUMBUS, OH 43219)
)
and)
)
SPECIALTY INTERIORS, INC.)
SERVE: ERIN JANNING)
2652 CRESCENT SPRINGS ROAD)
CRESCENT SPRINGS, KY 41017)
)
and)
)
THE HACKETT GROUP, INC.)
SERVE: CORPORATE CREATIONS)
NETWORK, INC.)
119 E. COURT STREET)
CINCINNATI, OH 45202)
)
and)
)
VERIZON EPN)
SERVE:)
CT CORPORATION SYSTEM)
4400 EASTON COMMONS WAY)
SUITE 125)
COLUMBUS, OH 43219)
)
and)
)

WELLPOINT FLEXIBLE BENEFIT)
PLAN)
SERVE:)
COMMUNITY INSURANCE COMPANY)
120 MONUMENT CIR)
INDIANAPOLIS, IN 46204)
))
and)
))
YRC WORLDWIDE, INC.)
SERVE:)
CT CORPORATION SYSTEM)
4400 EASTON COMMONS WAY)
SUITE 125)
COLUMBUS, OH 43219)
))
DEFENDANTS)

Plaintiffs Laura Aker; George Arnold; Cindy Bartlett; Joseph Baumgardner; Michelle Beavan; Denise Bess; Leona Beyer; Edythe Bishop; Rebekah Brady; Christina Brashear; Melissa Braucher; Jonathan Brunner; Janet Campbell; Robert Campbell; Bunnavuth Chhun; Jessica Cochran; Elizabeth Compo; Brenda Conley; Michael Crail; Joi Crowe; Tammy Dale; Patrick Dugan; Chris Ebbing; Kevin Elfers; Arlene Fait; Linda Favaron, as Executor of the Estate of Neil Favaron, Deceased; Amanda Franks; Mark Funk; Christine Gerald; Christina Goldstein; Samantha Hamilton-Curtis; Martha Hutton; Jeffrey Hyde; Shannon Koehler; Tom Lantry; Candi McKinney; Teresa McMillen; Billie Moore; Timothy Osborn; Jeff Potts; Sherri Puckett-Morrisette; Mike Sand; Kevin Schmit; Patrick Schmit; Glenna Shafer; Patrick Stephenson; Brien Thien; Britney Havens, as Administrator of the Estate of Kimberly Underwood, Deceased; Lindsay Walsh; Lonnie Wheeler; and Keith Young (collectively, the “Plaintiffs”), by and through counsel, and for their *Complaint with Jury Demand Endorsed Hereon* (the “Complaint”) against defendants ABX Air, Inc.; American Financial Group, Inc.; Anthem Insurance Co.; Armor Group, Inc.; AT&T; Blue Cross Blue Shield Illinois; Blue Cross Blue Shield Tennessee; Butler

Health Plan; Citi Bank; City of Lawrenceburg, Indiana; Community Insurance Co. Anthem; Containerport Group, Inc.; Definity Health United Health (Definity); Delta Air Lines, Inc.; DHL; Duke Energy Ohio, Inc.; Duro Hilex Poly, LLC; Empire Heathchoice Assurance; Enerfab, Inc.; Fifth Third Bancorp; Fisher Auto Parts Co.; GAF, Inc.; General Electric; The Good Samaritan Hospital of Cincinnati, Ohio; Graceworks Lutheran Services; Green Township, Ohio; Harland Clarke Corp.; Health Care Service Corporation; Heartland Health & Wellness Fund; HP Inc.; Jeff Wyler Dealer Group, Inc.; KCI Holding USA, Inc.; Linebarger Goggan Blair & Sampson, LLP; Board of Education of the Mason City Schools; Meyer Tool, Inc.; Midway Maintenance; Nease Corporation; Ohio Laborers' District Council/Ohio Contractors Association Fund; Ohio Public Employees Retirement System; The Procter and Gamble Health Care Plan; Rotech Healthcare, Inc.; Rumpke Consolidated Companies Inc.; Sara Lee Co.; Specialty Interiors, Inc.; The Hackett Group, Inc.; Verizon EPN; and YRC Worldwide, Inc. (collectively, the "Defendants"), state and allege as follows:

INTRODUCTION

This lawsuit is to hold the aforementioned Defendant medical insurance companies, self-funded and/or self-insured employers and/or employee health plans, medical benefit plan administrators, and/or third-party administrators accountable for approving and funding fraudulent, unnecessary and/or experimental surgeries on their insureds, the Plaintiffs.

Each Defendant knew or should have known that Abubakar Atiq Durrani, M.D. ("Dr. Durrani"), a spine surgeon, was wrongfully performing fraudulent, unnecessary and/or experimental surgeries on their Plaintiff insureds, and had an obligation and duty to NOT approve the surgeries that Plaintiffs underwent by Dr. Durrani at various Cincinnati area hospitals.

Dr. Durrani, who had contract(s) with Defendant insurance companies, plans and/or plan administrators, regularly used Infuse/BMP-2 (“BMP-2”) wrongfully or unlawfully, which is NON-FDA APPROVED and experimental in most surgical applications.

Dr. Durrani, who had contract(s) with Defendant insurance companies, plans and/or plan administrators, regularly used PureGen wrongfully and unlawfully, which is NON-FDA APPROVED and experimental.

JURISDICTION AND VENUE

1. These are claims and causes of action brought by each Plaintiff against his or her medical insurance carriers, self-funded and/or self-insured employers and/or employee health plans, medical benefit plan administrators, employers, and third party administrators for approving and funding fraudulent, unnecessary, or experimental spine surgeries by Dr. Durrani that Defendants knew or should have known should never have been approved, let alone funded.

2. Each Plaintiff entered into medical insurance contracts with the Defendant insurance carriers, self-funded and/or self-insured employers and/or employee health plans, and/or plan fiduciaries, or were beneficiaries under medical benefit plans. Plaintiffs do not presently have copies of their respective contracts of medical insurance with their respective insurer Defendant or the medical benefit plans.

3. This action is, in part, a good faith attempt to apply, modify or expand existing law.

4. Subject matter jurisdiction over this action in this Court is based upon 28 U.S.C. §1331 and 29 U.S.C. §1132(e), in that this action arises under the laws of the United States, including, but not limited to, 29 U.S.C. §1132(a). Subject matter jurisdiction over Plaintiffs’

claims that are not based upon 29 U.S.C. §1132(a) are appropriate in this Court under 28 U.S.C. §1367(a) (supplemental jurisdiction).

5. This Court has personal jurisdiction over each Defendant because it either: (i) is incorporated or organized in Ohio, (ii) has its principal place of business in Ohio, (iii) is registered with and qualified by the Ohio Secretary of State to transact business in Ohio, (iv) transacted business in Ohio, (v) contracted to insure risks located within Ohio or administer the insurance of those risks, and/or (vi) conducted activities that gave rise to Plaintiffs' claims for relief.

6. Venue of this action is proper in this District pursuant to 28 U.S.C. §1391(b) and 29 U.S.C. §1132(e)(2) (ERISA).

FACTUAL ALLEGATIONS

7. At all relevant times, each Defendant had contractual, legal, and/or fiduciary duties to only approve and fund surgeries that were medically necessary and to only approve implants, devices, and medical items for implantation into their respective insureds, the Plaintiffs, which were used consistent with federal and state law, regulations, and the standard of care. Therefore, Defendants were required to REFUSE to approve fraudulent, unnecessary, or experimental surgeries and specifically those surgeries involving the use of BMP-2 and PureGen that Defendants knew were being improperly used by Dr. Durrani and the hospitals where he performed surgeries.

8. Dr. Durrani's implantation of BMP-2 and PureGen into Plaintiffs was experimental, not approved by federal law and regulation, the standard of care and was medically unnecessary.

9. Nevertheless, each Defendant knew, approved of, and funded Dr. Durrani's fraudulent, unnecessary, or experimental surgeries, resulting in each Plaintiff being left with outstanding medical bills, medical liens and damages from the wrongful surgery due in part by Dr. Durrani's wrongful implantation of BMP-2 and PureGen. When Plaintiffs began filing lawsuits against Durrani, the hospitals, and other responsible persons, Defendants began filing medical liens against Plaintiffs in an attempt to levy or seize Plaintiffs' recovery.

10. Also, as a direct and proximate result of actions committed by the Defendants upon Plaintiffs, Plaintiffs sustained financial loss, have medical liens wrongly filed against them, severe personal injuries, pain and suffering, disfigurement, lost wages, future medical expenses, all forms of economic and noneconomic damages, and all damages requested in the Prayer for Relief section of this Complaint.

11. All Plaintiffs had at least one unnecessary, fraudulent, and experimental spine surgery performed by Dr. Durrani at one of the following hospitals: West Chester Medical Center, Cincinnati Children's Hospital Medical Center, Christ Hospital, Good Samaritan Hospital, Journey Lite, Riverview or Deaconess.

12. Each Plaintiffs had at least one unnecessary, fraudulent, and experimental spine surgery pre-approved by his or her medical insurance carriers who are Defendants in this action. The spine surgeries were unnecessary, nonindicated, not within the standard of care, and performed in violation of state and federal law and regulations, and using implants and devices, including but limited to BMP-2 and PureGen in violation of state and federal law and regulations.

13. Prior to or at the time of approving and funding Dr. Durrani's surgeries, each Defendant knew or should have known that said medical procedures and use of implants and

devices by Dr. Durrani were unnecessary, fraudulent, experimental non-indicated, not within the standard of care, contraindicated, or in violation of federal law and regulations.

14. Each Plaintiff is suing his or her respective medical insurance carrier identified in this Complaint. Each Plaintiff's carrier(s) Defendant is/are listed below.

15. West Chester/UC Health entered into a settlement with Medicare and Medicaid for \$4.1 million resolving those medical liens applicable to some Plaintiffs and those Plaintiffs seek an adjudication that those liens are resolved and extinguished.

PLAINTIFFS AND THEIR DEFENDANT CARRIERS

16. Laura Aker had surgery at Cincinnati Children's Hospital Medical Center on November 23, 2007, under Green Township insurance plan # EBMC0262576.

17. Laura Aker had surgery at Cincinnati Children's Hospital Medical Center on March 8, 2008, under Green Township insurance plan # 1560101.

18. George Arnold had surgery at West Chester Hospital on March 26, 2012, under AT&T insurance plan # 819802958.

19. Cindy Bartlett had surgery at Christ Hospital on January 24, 2007, under Fisher Auto Parts Co. insurance plan # 13492578.

20. Cindy Bartlett had surgery at Christ Hospital on December 12, 2007, under Fisher Auto Parts Co. insurance plan # 13492578.

21. Cindy Bartlett had surgery at Christ Hospital on March 9, 2009, under Fisher Auto Parts Co. insurance plan # KO0000830.

22. Cindy Bartlett had surgery at West Chester Hospital on August 2, 2010, under Fisher Auto Parts Co. insurance plan # 13492578.

23. Joseph Baumgardner had surgery at Christ Hospital on July 15, 2009, under Harland Clarke insurance plan # 934443256.

24. Joseph Baumgardner had surgery at West Chester Hospital on November 13, 2009, under Harland Clarke insurance plan # 934443256.

25. Michelle Beavan had surgery at Journey Lite on March 29, 2013, under Rumpke Consolidated Companies Inc insurance plan # 975841188.

26. Denise Bess had surgery at West Chester Hospital on January 20, 2010, under The Procter and Gamble Health Care Plan # 000640411-01.

27. Leona Beyer had surgery at Christ Hospital on June 25, 2008, under Ohio Public Employees Retirement System insurance plan # 596837956763.

28. Leona Beyer had surgery at West Chester Hospital on February 18, 2011, under Ohio Public Employees Retirement System insurance plan # 596837956763.

29. Edythe Bishop had surgery at West Chester Hospital on February 7, 2011, under Rumpke Consolidated Companies, Inc. insurance plan # 902934789.

30. Edythe Bishop had surgery at West Chester Hospital on July 25, 2012, under Rumpke Consolidated Companies, Inc. insurance plan # 902934789.

31. Edythe Bishop had surgery at Journey Lite on November 16, 2012, under Rumpke Consolidated Companies, Inc. insurance plan # 902934789.

32. Edythe Bishop had surgery at Journey Lite on May 29, 2013, under Rumpke Consolidated Companies, Inc. insurance plan # 902934789.

33. Rebekah Brady had surgery at West Chester Hospital on August 27, 2010, under Fifth Third Bancorp insurance plan # 920360788.

34. Christina Brashear had surgery at West Chester Hospital on November 25, 2009, under Midway Maintenance/Ohio Laborers' District Council-Ohio Contractors Association Fund insurance plan # 358913502619.

35. Christina Brashear had surgery at West Chester Hospital on August 11, 2010, under Midway Maintenance/Ohio Laborers' District Council-Ohio Contractors Association Fund insurance plan # 358913502619.

36. Christina Brashear had surgery at West Chester Hospital on March 23, 2011, under Midway Maintenance/Ohio Laborers' District Council-Ohio Contractors Association Fund insurance plan # 358913502619.

37. Christina Brashear had surgery at Journey Lite on December 7, 2012, under Midway Maintenance/Ohio Laborers' District Council-Ohio Contractors Association Fund insurance plan # 358913502619.

38. Melissa Braucher had surgery at Journey Lite on December 15, 2012, under The Armor Group, Inc. insurance plan # 908103593.

39. Jonathan Brunner had surgery at West Chester Hospital on June 20, 2011, under Butler Health Plan insurance plan # ZZ0012328.

40. Janet Campbell had surgery at Journey Lite on April 3, 2013, under UC Health insurance plan # 13882586.

41. Robert Campbell had surgery at West Chester Hospital on December 15, 2010, under Fifth Third Bancorp insurance plan # 831131328.

42. Bunnavuth Chhun had surgery at West Chester Hospital on March 6, 2013, under YRC Worldwide Inc. insurance plan # 806039170.

43. Jessica Cochran had surgery at Deaconess on June 26, 2009, under City of Lawrenceburg (Indiana) Employee Benefit Plan insurance plan # 303845260.

44. Jessica Cochran had surgery at West Chester Hospital on April 5, 2010, under City of Lawrenceburg (Indiana) Employee Benefit Plan insurance plan # 303845260.

45. Jessica Cochran had surgery at West Chester Hospital on February 16, 2011, under City of Lawrenceburg (Indiana) Employee Benefit Plan insurance plan # 303845260.

46. Jessica Cochran had surgery at West Chester Hospital on December 28, 2011, under City of Lawrenceburg (Indiana) Employee Benefit Plan insurance plan # 303845260.

47. Elizabeth Compo had surgery at West Chester Hospital on October 6, 2010, under DHL insurance plan # 801827763.

48. Elizabeth Compo had surgery at West Chester Hospital on August 24, 2011, under DHL insurance plan # 801827763.

49. Elizabeth Compo had surgery at West Chester Hospital on November 4, 2011, under DHL insurance plan # 801827763.

50. Elizabeth Compo had surgery at West Chester Hospital on February 29, 2012, under DHL insurance plan # 801827763.

51. Elizabeth Compo had surgery at West Chester Hospital on May 4, 2012, under DHL insurance plan # 801827763.

52. Brenda Conley had surgery at West Chester Hospital on February 9, 2011, under Duro Hilex Poly, LLC insurance plan # 13973658.

53. Brenda Conley had surgery at West Chester Hospital on May 11, 2011, under Duro Hilex Poly, LLC insurance plan # 13973658.

54. Brenda Conley had surgery at West Chester Hospital on June 27, 2011, under Duro Hilex Poly, LLC insurance plan # 13973658.

55. Brenda Conley had surgery at Journey Lite on September 21, 2011, under Duro Hilex Poly, LLC insurance plan # 13973658.

56. Brenda Conley had surgery at West Chester Hospital on April 11, 2012, under Duro Hilex Poly, LLC insurance plan # 13973658.

57. Brenda Conley had surgery at Journey Lite on September 21, 2012, under Duro Hilex Poly, LLC insurance plan # 13973658.

58. Brenda Conley had surgery at Journey Lite on March 8, 2013, under Duro Hilex Poly, LLC insurance plan # 13973658.

59. Michael Crail had surgery at West Chester Hospital on October 10, 2011, under HP Inc. insurance plan # HPE201A21992.

60. Michael Crail had surgery at West Chester Hospital on July 9, 2012, under HP Inc. insurance plan # HPE201A21992.

61. Joi Crowe had surgery at Christ Hospital on May 13, 2009, under Mason City Schools insurance plan # MCS000171.

62. Joi Crowe had surgery at West Chester Hospital on December 7, 2009, under Mason City Schools insurance plan # MCS000171.

63. Joi Crowe had surgery at Journey Lite on November 2, 2012, under Mason City Schools insurance plan # MCS000171.

64. Joi Crowe had surgery at Journey Lite on January 11, 2013, under Mason City Schools insurance plan # MCS000171.

65. Tammy Dale had surgery at West Chester Hospital on October 14, 2011, under Enerfab, Inc. insurance plan # ERF000417.

66. Tammy Dale had surgery at West Chester Hospital on January 6, 2012, under Enerfab, Inc. insurance plan # ERF000417.

67. Tammy Dale had surgery at West Chester Hospital on February 6, 2012, under Enerfab, Inc. insurance plan # ERF000417.

68. Patrick Dugan had surgery at West Chester Hospital on June 18, 2010, under The Hackett Group, Inc. insurance plan # 949011021.

69. Chris Ebbing had surgery at West Chester Hospital on February 6, 2010, under Meyer Tool, Inc. insurance plan # 295929432.

70. Chris Ebbing had surgery at West Chester Hospital on August 21, 2009, under Meyer Tool, Inc. insurance plan # 295929432.

71. Kevin Elfers had surgery at West Chester Hospital on November 23, 2009, under Mason City Schools insurance plan # MCS000224.

72. Arlene Fait had surgery at West Chester Hospital on July 30, 2010, under GAF Inc., insurance plan # 823019402.

73. Arlene Fait had surgery at West Chester Hospital on November 29, 2010, under GAF Inc., insurance plan # 823019402.

74. The late Neil Favaron had surgery at West Chester Hospital on May 24, 2010, under Anthem Insurance Companies Inc. - WellPoint Flexible Benefit Plan insurance plan # WLUAN0301733.

75. The late Neil Favaron had surgery at West Chester Hospital on September 22, 2010, under Anthem Insurance Companies Inc. - WellPoint Flexible Benefit Plan insurance plan # WLUAN0301733.

76. The late Neil Favaron had surgery at West Chester Hospital on December 3, 2010, under Anthem Insurance Companies Inc. - WellPoint Flexible Benefit Plan insurance plan # WLUAN0301733.

77. Amanda Franks had surgery at West Chester Hospital on March 10, 2010, under Rotech Healthcare Inc. insurance plan # 948515292.

78. Amanda Franks had surgery at West Chester Hospital on November 2, 2009, under Rotech Healthcare Inc. insurance plan # 948515292.

79. Amanda Franks had surgery at West Chester Hospital on October 3, 2011, under Rotech Healthcare Inc. insurance plan # 948515292.

80. Mark Funk had surgery at Cincinnati Children's Hospital Medical Center on December 14, 2006, under Definity Health and Sarah Lee Company insurance plan # 800564331.

81. Christine Geraldts had surgery at West Chester Hospital on October 2, 2009, under General Electric insurance plan # 963212206.

82. Christina Goldstein had surgery at West Chester Hospital on January 13, 2010, under Verizon EPN insurance plan # EZVAN2407854.

83. Christina Goldstein had surgery at West Chester Hospital on September 24, 2010, under Verizon EPN insurance plan # EZVAN2407854.

84. Christina Goldstein had surgery at Christ Hospital on December 3, 2008, under Verizon EPN insurance plan # EZVAN2407854.

85. Christina Goldstein had surgery at West Chester Hospital on February 22, 2012, under Verizon EPN insurance plan # EZVAN2407854.

86. Christina Goldstein had surgery at West Chester Hospital on April 22, 2013, under Verizon EPN insurance plan # EZVAN2407854.

87. Samantha Hamilton-Curtis had surgery at Cincinnati Children's Hospital Medical Center on January 12, 2007, under Nease Corporation insurance plan # 970726950.

88. Samantha Hamilton-Curtis had surgery at West Chester Hospital on December 4, 2009, under Nease Corporation insurance plan # 970726950.

89. Samantha Hamilton-Curtis had surgery at West Chester Hospital on June 14, 2010, under Nease Corporation insurance plan # 970726950.

90. Samantha Hamilton-Curtis had surgery at West Chester Hospital on October 8, 2010, under Nease Corporation insurance plan # 970726950.

91. Samantha Hamilton-Curtis had surgery at West Chester Hospital on March 14, 2011, under Nease Corporation insurance plan # 970726950.

92. Martha Hutton had surgery at Christ Hospital on October 11, 2007, under General Electric insurance plan # 854622932.

93. Martha Hutton had surgery at West Chester Hospital on March 9, 2012, under General Electric insurance plan # 854622932.

94. Jeffrey Hyde had surgery at Christ Hospital on July 2, 2008, under American Financial Group insurance plan # 946193969.

95. Jeffrey Hyde had surgery at West Chester Hospital on August 27, 2009, under American Financial Group insurance plan # 946193969.

96. Shannon Koehler had surgery at Christ Hospital on July 13, 2009, under Empire HealthChoice Assurance/Citi Bank insurance plan # CGH86865691.

97. Shannon Koehler had surgery at West Chester Hospital on January 25, 2010, under Empire HealthChoice Assurance/Citi Bank insurance plan # CGH86865691.

98. Shannon Koehler had surgery at West Chester Hospital on June 25, 2012, under Empire HealthChoice Assurance/Citi Bank insurance plan # CGH86865691.

99. Tom Lantry had surgery at Journey Lite on April 15, 2013, under Specialty Interiors, Inc. insurance plan # YRN002M65185.

100. Candi McKinney had surgery at West Chester Hospital on June 6, 2012, under BlueCross BlueShield of Tennessee/HCSO insurance plan AVE900704509.

101. Teresa McMillen had surgery at West Chester Hospital on March 19, 2012, under BlueCross BlueShield of Illinois/HCSO insurance plan # TGH841633529.

102. Teresa McMillen had surgery at West Chester Hospital on August 22, 2012, under BlueCross BlueShield of Illinois/HCSO insurance plan # TGH841633529.

103. Billie Moore had surgery at West Chester Hospital on November 17, 2010, under Jeff Wyler Dealer Group, Inc. insurance plan # 00-3377913.

104. Timothy Osborn had surgery at West Chester Hospital on January 29, 2010, under ABX Air Inc. insurance plan # 936858148.

105. Timothy Osborn had surgery at West Chester Hospital on January 7, 2011, under ABX Air Inc. insurance plan # 936858148.

106. Timothy Osborn had surgery at West Chester Hospital on March 9, 2012, under ABX Air Inc. insurance plan # 936858148.

107. Timothy Osborn had surgery at Christ Hospital on August 5, 2009, under ABX Air Inc. insurance plan # 936858148.

108. Timothy Osborn had surgery at West Chester Hospital on April 1, 2013, under ABX Air Inc. insurance plan # 936858148.

109. Jeff Potts had surgery at Good Samaritan Hospital on October 15, 2010, under The Good Samaritan Hospital of Cincinnati insurance plan # 000-480616.

110. Sherri Puckett-Morrisette had surgery at West Chester Hospital on December 26, 2012, under Linebarger Goggan Blair & Sampson, LLP insurance plan # 902430301.

111. Mike Sand had surgery at West Chester Hospital on April 21, 2010, under Duke Energy Ohio, Inc. insurance plan # DUKW14481129-01.

112. Kevin Schmit had surgery at Journey Lite on January 4, 2013, under KCI Holding USA, Inc. (KONECRANES) insurance plan # 876871565.

113. Patrick Schmit had surgery at Journey Lite on August 31, 2012, under KCI Holding USA, Inc. (KONECRANES) insurance plan # 909035691.

114. Glenna Shafer had surgery at West Chester Hospital on November 9, 2011, under BlueCross and BlueShield of Tennessee/HCSO insurance plan # ZEB904373463.

115. Glenna Shafer had surgery at West Chester Hospital on April 20, 2012, under BlueCross and BlueShield of Tennessee/HCSO insurance plan # ZEB904373463.

116. Patrick Stephenson had surgery at West Chester Hospital on August 27, 2010, under Meyer Tool, Inc. insurance plan # 406176906.

117. Patrick Stephenson had surgery at West Chester Hospital on March 28, 2011, under Meyer Tool, Inc. insurance plan # 406176906.

118. Patrick Stephenson had surgery at West Chester Hospital on May 4, 2011, under Meyer Tool, Inc. insurance plan # 406176906.

119. Patrick Stephenson had surgery at West Chester Hospital on November 7, 2012, under Meyer Tool, Inc. insurance plan # 406176906.

120. Brian Thien had surgery at West Chester Hospital on February 17, 2010, under The Procter and Gamble Health Care Plan # 000-1945914.

121. The late Kimberly Underwood had surgery at West Chester Hospital on January 14, 2013, under Containerport Group, Inc. insurance plan # Y14381148.

122. Lindsay Walsh had surgery at Cincinnati Children's Hospital Medical Center on March 31, 2008, under Delta Air Lines, Inc. insurance plan # 915799261.

123. Tracey Walsh had surgery at West Chester Hospital on January 28, 2011, under Delta Air Lines, Inc. insurance plan # 0-14352700.

124. Tracey Walsh had surgery at West Chester Hospital on February 7, 2011, under Delta Air Lines, Inc. insurance plan # 0-14352700.

125. Lonnie Wheeler had surgery at West Chester Hospital on December 3, 2010, under Kroger/The Heartland Health and Wellness Fund insurance plan # UWE100012049.

126. Lonnie Wheeler had surgery at West Chester Hospital on March 21, 2012, under Kroger/The Heartland Health and Wellness Fund insurance plan # UWE100012049.

127. Lonnie Wheeler had surgery at West Chester Hospital on September 8, 2009, under Kroger/The Heartland Health and Wellness Fund insurance plan # UWE100012049.

128. Lonnie Wheeler had surgery at West Chester Hospital on November 9, 2009 under Kroger/The Heartland Health and Wellness Fund insurance plan # UWE100012049.

129. Keith Young had surgery at West Chester Hospital on April 7, 2010, under Community Insurance Company/Graceworks Lutheran Services insurance plan # YRP153M55326.

DEFENDANTS

130. Abx Air, Inc. is a Delaware corporation qualified to transact business in Ohio and operating in the Southern District of Ohio.

131. American Financial Group, Inc. is an Ohio corporation operating in the Southern District of Ohio.

132. Anthem Insurance Co. is an Indiana corporation qualified to transact business in Ohio and operating in the Southern District of Ohio.

133. Armor Group, Inc. is an Ohio corporation operating in the Southern District of Ohio.

134. AT&T is a Delaware corporation transacting business in the Southern District of Ohio.

135. BlueCross BlueShield Tennessee is a Tennessee corporation qualified to transact business in Ohio and operating in the Southern District of Ohio.

136. Butler Health Plan is an Ohio corporation transacting business or insuring health risks in the Southern District of Ohio.

137. Citi Bank is a national banking corporation operating in the Southern District of Ohio.

138. City of Lawrenceburg, Indiana is an Indiana municipal corporation operating or insuring health risks in the Southern District of Ohio

139. Community Insurance Co. is an Indiana corporation operating or insuring health risks in the Southern District of Ohio.

140. Containerport Group, Inc. is an Ohio corporation operating in the Southern District of Ohio.

141. Definity Health /United Health (Definity) is a Delaware corporation operating in the Southern District of Ohio.

142. Delta Air Lines, Inc. is a Delaware corporation operating in the Southern District of Ohio.

143. DHL is a Florida corporation operating in the Southern District of Ohio.

144. Duke Energy Ohio, Inc. is an Ohio corporation operating in the Southern District of Ohio.

145. Duro Hilex Poly, LLC is a Delaware limited liability company operating in the Southern District of Ohio.

146. Empire Healthchoice Assurance is an Indiana corporation operating in the Southern District of Ohio.

147. Enerfab, Inc. is an Ohio corporation operating in the Southern District of Ohio.

148. Fifth Third Bancorp is an Ohio corporation operating in the Southern District of Ohio.

149. Fisher Auto Parts Co. is an Ohio corporation operating in the Southern District of Ohio.

150. GAF, Inc. is an Ohio corporation operating in the Southern District of Ohio.

151. The General Electric Company is a New York corporation operating in the Southern District of Ohio.

152. The Good Samaritan Hospital of Cincinnati, Ohio is an Ohio non-profit corporation operating in the Southern District of Ohio.

153. Graceworks Lutheran Services is an Ohio non-profit corporation operating in the Southern District of Ohio.

154. Green Township, Ohio operates in the Southern District of Ohio.

155. Harland Clarke Corp. is a Delaware corporation operating in the Southern District of Ohio.

156. Health Care Service Corporation is a mutual legal reserve company operating in the Southern District of Ohio (“HCSC”).

157. Heartland Health & Wellness Fund is an Ohio corporation operating in the Southern District of Ohio.

158. HP Inc. is an Ohio corporation operating in the Southern District of Ohio.

159. Jeff Wyler Dealer Group, Inc. is an Ohio corporation operating in the Southern District of Ohio.

160. Linebarger Goggan Blair & Sampson, LLC is a Texas limited liability company operating in the Southern District of Ohio.

161. The Board of Education of the Mason City Schools operates in the Southern District of Ohio.

162. Meyer Tool, Inc. is an Ohio corporation operating in the Southern District of Ohio.

163. Midway Maintenance is an Ohio corporation or registered trade name operating in the Southern District of Ohio.

164. Nease Corporation is an Ohio corporation operating in the Southern District of Ohio.

165. Ohio Laborers' District Council-Ohio Contractors Association Fund is an Ohio entity operating in the Southern District of Ohio.

166. Ohio Public Employees Retirement System is an Ohio entity operating in the Southern District of Ohio.

167. The Procter and Gamble Health Care Plan is an Ohio entity operating in the Southern District of Ohio.

168. Rotech Healthcare, Inc. is a Delaware corporation operating in the Southern District of Ohio.

169. Rumpke Consolidated Companies Inc. is an Ohio corporation operating in the Southern District of Ohio.

170. Sara Lee Co. is an Ohio Corporation operating in the Southern District of Ohio.

171. Specialty Interiors, Inc. is a Kentucky Corporation operating in the Southern District of Ohio.

172. The Hackett Group, Inc. is a Florida corporation operating in the Southern District of Ohio.

173. Verizon EPN is an Ohio corporation operating in the Southern District of Ohio.

174. Wellpoint Flexible Benefit Plan is an Indiana entity operating in the Southern District of Ohio.

175. YRC Worldwide is a Delaware corporation operating in the Southern District of Ohio.

CAUSES OF ACTION

Count I – Breach of Contract

176. Plaintiffs re-allege and incorporate by reference as if fully rewritten the previous paragraphs of this Complaint.

177. Each Plaintiff had written contracts or plans for medical insurance benefits with their respective Defendant insurance company(s), employers, and/or plan administrators as described in prior paragraphs of this Complaint. The contracts or plans required Defendants to approve and approve for payment and to pay for only those surgeries, treatments, implants and devices that the Defendants knew were necessary, indicated, within the standard of care, and not in violation of federal law and regulations.

178. As set forth above, Defendants breached those contracts by approving and approving for payment surgeries, treatments, and use of implants and other devices which were not indicated, were unnecessary, and were contraindicated, not within the standard of care and violated federal law and regulations.

179. As a direct and proximate result of said breach, Plaintiffs have and will continue to sustain damages, including but not limited to being forced to pay medical bills for treatments the Defendants should not have approved and being forced to pay medical liens filed on their recoveries and potential recoveries to cover the same medical bills. Defendant insurance companies and/or plan fiduciaries breached their duties to Plaintiffs and should not be able to benefit financially from breaching those duties.

180. Also, as a direct and proximate result of actions in violation of the fiduciary duties by Defendants upon Plaintiffs, Plaintiffs sustained all damages requested in the prayer for relief.

Count II – Negligence

181. Plaintiffs re-allege and incorporate by reference as if fully rewritten the previous paragraphs of this Complaint.

182. Each Defendant insurance companies and any fiduciaries owed a duty to its respective insured/plaintiff, who they insured, to only approve and approve for payment, surgeries, treatments, implants and devices which were the Defendants knew to be necessary, indicated, within the standard of care and not in violation of federal law and regulations.

183. Nevertheless, Defendants breached said duty owed to Plaintiffs by approving and approving for payment surgeries, treatments, implants and devices which the Defendants knew or should have known were fraudulent, unnecessary, non-indicated, experimental, not within the standard of care and in violation of federal law and regulations.

184. As a direct and proximate result of Defendants' breach of duty owed to Plaintiffs, Plaintiffs have and will continue to sustain damages, including but not limited to being forced to pay medical bills for treatments the Defendants should not have approved and being forced to pay medical liens filed on their recoveries and potential recoveries to cover the same medical bills. Defendant insurance companies, employers and/or plan fiduciaries breached their duties to Plaintiffs and should not be able to benefit financially from breaching those duties.

185. Also, as a direct and proximate result of actions in violation of the fiduciary duty by the Defendants upon Plaintiffs, Plaintiffs sustained all damages requested in the prayer for relief.

Count III – Constructive Fraud

186. Plaintiffs re-allege and incorporate by reference as if fully rewritten the previous paragraphs of this Complaint.

187. Defendants, through their medical directors and staff, committed constructive fraud by misrepresenting material facts to Plaintiffs: that their surgeries, treatments, implants and devices to be performed and implanted by Dr. Durrani and the hospitals where he worked and/or had privileges, were necessary, indicated, within the standard of care, and not in violation of federal law and regulations, when in fact the opposite was true.

188. The said surgeries, treatments, implants, and devices were fraudulent, unnecessary, non-indicated, experimental, not within the standard of care and the use and implementation thereof violated federal law and regulations. The individual misrepresentations were made shortly before each Plaintiff's surgery or treatment date, which said date is fully known by the Defendants.

189. The Defendants owed a legal and/or equitable duty to not misrepresent and/or conceal said material facts because the Defendants are health insurance companies licensed and regulated by state and federal authorities to obtain confidential health information regarding the Plaintiffs and, in return for receiving billions of dollars from insured individuals such as the Plaintiffs, agreed to review medical histories, diagnoses, prognoses, federal and state law and regulations, and other confidential information to make critical decisions regarding Plaintiffs' medical care, and financing of medical care. Therefore, it is foreseeable and reasonable for the communities where Defendants sell insurance, to trust Defendants and their medical directors and staff to be competent and ethical and to provide truthful information to Plaintiffs.

190. The relationship between Plaintiffs and Defendants was confidential and based upon trust, moreover, the Defendants owed Plaintiffs a fiduciary duty. See, e.g., *Crnic v. Am. Republic Ins. Co.*, 2007-Ohio-5439 ("the relationship between an insurance company and an applicant for health insurance is one of trust"); and *Buemi v. Mutual of Omaha Ins. Co.*, 37 Ohio

App.3d 113, 524 N.E.2d 183 (1987) (“the relationship between the insurer and the insured is fiduciary in nature and requires the parties to use the utmost good faith in their dealings”; “a cause of action for constructive fraud, which, under Kentucky law, is tantamount to a claim for fraud without the element of intent.”); *Knight v. Stewart Title*, 07-87-DLB (E.D. Ky, 2014); *Wood v. Kirby*, 566 S.W.2d 751, 755 (Ky. 1978): “Constructive fraud arises through some breach of a legal duty which, irrespective of moral guilt, the law would pronounce fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests”; *Scott v. Boder, Inc.*, 571 N.E.2d 313 (Ind. App. 1991); *Mullen v. Cogdell*, 643 N.E.2d 390 (Ind. App. 1994).

191. The breach of these duties owed to the Plaintiffs is fraudulent based on state and federal law. The duties owed to Plaintiffs are based upon the special confidence and trust reposed in the fidelity and integrity of the Defendants, who are clearly in a superior position with influence over Plaintiffs based on their position as medical insurance companies who owe a fiduciary duty. The Defendants hold themselves out to the community, including Plaintiffs, through advertising, lobbying, associations with Plaintiffs’ employers, and networking, as institutions who are to be trusted with the most important decisions a person can make: matters of life and death.

192. The misrepresentations and concealments of facts complained of are material. Plaintiffs justifiably relied upon Defendant’s constructive fraud because the Defendants held themselves out as large, well-managed financial institutions that could be trusted by Plaintiffs.

193. As a direct and proximate result of the constructive fraud upon Plaintiffs by Defendants, Plaintiffs have and will continue to sustain damages, including but not limited to being forced to pay medical bills for treatments the Defendants should not have approved and being forced to pay medical liens filed on their recoveries and potential recoveries to cover the

same medical bills. Defendant insurance companies, employers and/or plan fiduciaries breached their duties to Plaintiffs and should not be able to benefit financially from breaching those duties.

194. Also, as a direct and proximate result of actions in violation of the fiduciary duty by the Defendants upon Plaintiffs, Plaintiffs sustained all damages requested in the prayer for relief.

Count IV – ERISA: Breach of Fiduciary Duty

195. Plaintiffs re-allege and incorporate by reference as if fully rewritten the previous paragraphs of this Complaint.

196. Defendants are fiduciaries with respect to their health insurance plans as defined by 29 U.S.C. §1002(21)(A).

197. Plaintiffs bring this Count under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1101 et seq. By having been given and/or assumed discretionary authority and responsibilities for administering health care benefits under employee benefit plans, the Defendants are fiduciaries as defined in 29 U.S.C. §1102(21)(A). As plan fiduciaries, the Defendants are obligated to discharge their duties “solely in the interest of the participants and beneficiaries” and exclusively for the purpose of providing and administering benefits to plan participants and beneficiaries. 29 U.S.C. §1104(a)(1) and 1104(a)(1)(A)(I). In carrying out these fiduciary duties, the Defendants are obligated to exercise ordinary care and must seek to administer plan benefits in strict accordance with the terms of the underlying plan documents. 29 U.S.C. §§1104(a)(1)(B) and 1104(a)(1)(D).

198. By systematically approving and approving for payment surgeries, treatments, and use of implants and other devices which were not indicated, were unnecessary, not within the

standard of care, and were non-indicated, contraindicated, and violated federal law and regulations, the Defendants breached their fiduciary duties of loyalty and care to Plaintiffs.

199. Pursuant to 29 U.S.C. §1132(a)(3), Plaintiffs are authorized and entitled to seek declaratory and injunctive relief to enjoin the illegal practices of the Defendants described herein, and to obtain such other appropriate equitable or remedial relief as may be necessary under the circumstances to redress the Defendant's breaches of duty and violations of law.

200. As a direct and proximate result of Defendants' breaches of fiduciary duty owed to Plaintiffs by them, Plaintiffs have and will continue to sustain damages, including but not limited to being forced to pay medical bills for treatments the Defendants should not have approved and being forced to pay medical liens filed on their recoveries and potential recoveries to cover the same medical bills. Defendant insurance companies, employers and/or plan fiduciaries breached their duties to Plaintiffs and should not be able to benefit financially from breaching those duties.

201. Also, as a direct and proximate result of actions in violation of the fiduciary duty by the Defendants upon Plaintiffs, Plaintiffs sustained all damages requested in the prayer for relief.

202. Given the nature of the claims in this case, to require Plaintiffs to do anything more before filing suit would be futile. Futility is particularly clear since Plaintiffs have sufficiently alleged breaches of fiduciary duty by the Defendants, and the existence of an inherent conflict of interest between Defendants' obligations as fiduciaries for ERISA plan participants, and the Defendant's internal business motives. In fact, despite the Defendants' direct knowledge that their practices have violated, and continue to violate, the express terms of

the ERISA plans, Defendants have refused to change their practice of filing liens on Durrani Plaintiffs' cases.

203. Since this case was originally filed, several lien holders have resolved these issues with some former Plaintiffs. Therefore, history has shown that Defendants will only change their practice pursuant to threat of legal judgment.

204. Moreover, since Plaintiffs allege that Defendants use a systematic methodology to approve unnecessary and non-indicated surgeries as pled in direct contravention to its obligations under plan documents and ERISA, and in some instances continue to do so, and since Plaintiffs are challenging that systematic methodology (as opposed to an exercise of discretion with respect to an individual claim), any further effort to exhaust administrative remedies would be a futile act that is not required as a matter of law.

Count V – ERISA: Equitable Estoppel

205. Plaintiffs re-allege and incorporate by reference as if fully rewritten the previous paragraphs of this Complaint.

206. Defendants are fiduciaries with respect to their health insurance plans as defined by 29 U.S.C. §1002(21)(A).

207. Plaintiffs bring this Count under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1101, et seq. By having been given and/or assumed discretionary authority and responsibilities for administering health care benefits under employee benefit plans, the Defendants are fiduciaries as defined in 29 U.S.C. §1102(21)(A). As plan fiduciaries, the Defendants are obligated to discharge their duties “solely in the interest of the participants and beneficiaries” and exclusively for the purpose of providing and administering benefits to plan participants and beneficiaries. 29 U.S.C. §1104(a)(1) and 1104(a)(1)(A)(I). In carrying out these

fiduciary duties, the Defendants are obligated to exercise ordinary care and must seek to administer plan benefits in strict accordance with the terms of the underlying plan documents. 29 U.S.C. §§ 1104(a)(1)(B) and 1104(a)(1)(D).

208. Defendants approved and approved for payment surgeries, treatments, and use of implants and other devices which were not indicated, were unnecessary, not within the standard of care, and were contraindicated, and violated federal law and regulations. This conduct and language amounted to a representation of material fact, that being the surgeries, treatments and implants were indicated, necessary, within the standard of care, and in compliance with federal law and regulations.

209. Each Defendant was aware and is aware of the fact that said surgeries, treatments, and use of implants and devices were fraudulent, unnecessary, experimental, not indicated or contraindicated, not within the standard of care, and violated federal law and regulations.

210. The Defendants intended that the material representations be acted on, and the Plaintiffs reasonably believed the Defendants intended Plaintiffs to act upon said material representations and submit to the surgeries, treatments, and use of implants and devices.

211. The Plaintiffs were unaware of the true facts and the Plaintiffs reasonably and justifiably relied upon said material representations to Plaintiffs' detriment.

212. By systematically approving and approving for payment surgeries, treatments, and use of implants and other devices which were fraudulent, unnecessary, experimental, not within the standard of care, non-indicated or contraindicated, and violated federal law and regulations, the Defendants breached their fiduciary duties of loyalty and care to Plaintiffs.

213. As a direct and proximate result of Defendants' breaches of fiduciary duty owed to Plaintiffs by them, Plaintiffs have and will continue to sustain damages, including but not

limited to being forced to pay medical bills for treatments the Defendants should not have approved and being forced to pay medical liens filed on their recoveries and potential recoveries to cover the same medical bills. Defendant insurance companies, employers and/or plan fiduciaries breached their duties to Plaintiffs and should not be able to benefit financially from breaching those duties.

214. Pursuant to 29 U.S.C. §1132(a)(3), Plaintiffs are authorized and entitled to seek declaratory and injunctive relief to enjoin the illegal practices of the Defendants described herein, and to obtain such other appropriate equitable or remedial relief as may be necessary under the circumstances to redress the Defendant's breaches of duty and violations of law.

215. Based on the above, this Court should hold that Defendants are estopped from enforcing the medical liens which are the subject of this case.

216. Also, as a direct and proximate result of actions in violation of the fiduciary duty by the Defendants upon Plaintiffs, Plaintiffs sustained all damages requested in the prayer for relief.

217. Given the nature of the claims in this case, to require Plaintiffs to do anything more before filing suit would be futile. Futility is particularly clear since Plaintiffs have sufficiently alleged breaches of fiduciary duty by the Defendants, and the existence of an inherent conflict of interest between Defendants' obligations as fiduciaries for ERISA plan participants, and the Defendant's internal business motives. In fact, despite the Defendants' direct knowledge that their practices have violated, and continue to violate, the express terms of the ERISA plans, Defendants have refused to change their practice of filing liens on Plaintiffs' cases.

218. Since this case was originally filed, several lien holders have resolved these issues with some former Plaintiffs. Therefore, history has shown that Defendants will only change their practice pursuant to threat of legal judgment.

219. Moreover, since Plaintiffs allege that Defendants use a systematic methodology to approve fraudulent, unnecessary, experimental, non-indicated or contraindicated surgeries as pled in direct contravention to its obligations under plan documents and ERISA, and in some instances continue to do so, and since Plaintiffs are challenging that systematic methodology (as opposed to an exercise of discretion with respect to an individual claim), any further effort to exhaust administrative remedies would be a futile act that is not required as a matter of law.

JURY DEMAND

Plaintiffs demand trial by jury on all issues so triable.

PRAYER FOR RELIEF

Wherefore, Plaintiffs seek all relief to which they are entitled including waiver or release of all healthcare liens created by the approval of unnecessary surgery, and including but not limited to the following:

1. Past medical bills;
2. Future medical bills;
3. Lost income and benefits;
4. Lost future income and benefits;
5. Loss of ability to earn income;
6. Past pain and suffering;
7. Future pain and suffering;
8. Plaintiffs seek a finding that the injuries are catastrophic under R.C. 2315.18;

10. All incidental costs and expenses incurred because of the injuries;
11. The damages to Plaintiffs' credit because of the injuries;
12. Punitive damages;
13. Costs;
14. Attorneys' fees;
15. Interest;
16. All property loss;
17. Trial by jury on all issues so triable; and
17. All other relief to which Plaintiffs are entitled, including R.C. 1345.01.

Respectfully submitted,

/s/ James F. Maus

James F. Maus (0098245)

Deters Law

441 Vine Street, 44th Floor

Cincinnati, Ohio 45202

Phone: (859) 363-1900

Mobile: (513) 448-7024

Fax: (859) 363-1444

/s/ Robert A. Winter, Jr.

Robert A. Winter, Jr. (#0038673)

P.O. Box 175883

Fort Mitchell, KY 41017-5883

(859) 250-3337

robertawinterjr@gmail.com

Counsel for Plaintiffs